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101ST CONGRESS *2d Session* | SENATE | REPORT 101-430

PROVIDING FOR THE TRANSFER OF CERTAIN LANDS TO THE STATE OF CALIFORNIA, AND FOR OTHER PURPOSES

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2809]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2809) to provide for the transfer of certain lands to the State of California, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) in order to protect certain outstanding examples of ponderosa pine, sugar pine, and giant sequoia trees located in the North and South Calaveras Groves, on the western slope of the Sierra Nevada Mountains, the State of California has established the Calaveras Big Trees State Park;

(2) for similar purposes, the United States has designated certain adjacent Federal lands, amounting to approximately 379 acres, as the Calaveras Big Trees National Forest; and

(3) this National Forest (managed as part of the Stanislaus National Forest) is the smallest National Forest in the United States and could be more appropriately and efficiently managed as part of the Calaveras Big Trees State Park.

(b) PURPOSE.—The purpose of this Act is to improve the management of the lands located in the Calaveras Big Trees National Forest, and to protect certain examples of ponderosa pine, sugar pine, and giant sequoia trees, by unifying the management of the lands in such National Forest and in the California Calaveras Big Trees State Park.

SEC. 2. LAND CONVEYANCE.

(a) CONVEYANCE.—Subject to valid existing rights and the provisions of this Act, the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized and directed to convey all right, title, and interest of the United States in and to lands and interests therein within the Calaveras Big Trees National Forest, as generally depicted on a map numbered 20435 and dated June 5, 1989, prepared by the California Department of Parks and Recreation, to the State of California for inclusion within the Calaveras Big Trees State Park.

(b) MAP AND DESCRIPTION.—As soon as practicable after the enactment of this Act, the Secretary shall submit a map and legal description of the lands referred to in subsection (a) to the Committee on Interior and Insular Affairs of the United States House of Representatives, and the Committee on Energy and Natural Resources of the Senate. Such map and legal description shall have the same force and effect as if included in this Act, except that any clerical or typographical errors in such map or legal description may be corrected. The Secretary shall place such map and legal description on file, and make them available for public inspection, in the Office of the Chief of the Forest Service.

(c) CONDITIONS OF CONVEYANCE.—Conveyance of the lands and interests described in subsection (a) of this section shall be subject to the following conditions—

(1) The conveyance shall take place only if within two years after the date of enactment of this Act, there is concluded an agreement between the State of California and the Secretary whereby the State of California agrees to provide to the United States, in exchange for the lands described in subsection (a) and pursuant to terms and conditions which the Secretary finds acceptable, consideration of approximately equal value. Such consideration shall include either lands in California that the Secretary finds suitable for addition to, and are contiguous to, one or more units of the National Forest System, cash payment, or monetary grants awarded to the United States after June 1, 1950, or any combination thereof;

(2) No harvest of timber (except as may be necessary for the control of fire, insects, or disease) and no mining, mineral leasing, or geothermal exploration or development shall be permitted on such lands;

(3) Any action by the State of California to convey any portion of such lands or interests to any entity other than the United States shall be void ab initio and shall result in the reversion to the United States of all right, title, and interest in such lands;

(4) Any action by the State of California to permit the use of any portion of such lands for any purpose prohibited by this subsection or any purpose incompatible with the continued ability of such lands to support ponderosa pine, sugar pine, or giant sequoia trees, shall result in the reversion of all right, title and interest in such lands to the United States. Any such lands which revert to the United States shall be incorporated into the Stanislaus National Forest and managed to preserve and protect the stands of ponderosa pine, sugar pine and giant sequoia trees located on such lands;

(5) The Secretary, acting through the Forest Service, shall be afforded by appropriate officials of the State of California reasonable opportunities to collect seeds from trees located on such lands for scientific or silvicultural purposes;

(6) The Secretary, upon prior notification to the State of California, shall be entitled at any time to enter upon such lands for the purpose of monitoring the management of such lands and the compliance of the State of California with the provisions of this subsection; and

(7) The conveyance shall be subject to the following reservations or exceptions:

(A) existing ditches and canals as authorized by the Act of August 30, 1890 (43 U.S.C. 945); and

(B) any existing rights-of-way to provide the United States and its assigns access to federally owned lands.

(d) ENFORCEMENT.—Upon the request of the Secretary, the Attorney General shall bring any action or take any other steps necessary to enforce the provisions of subsection (c) of this section.

(e) TIMING, VALUE, AND STATUS.—(1) Conveyance of lands to the State of California pursuant to this Act shall occur when the agreement described in paragraph (1) of subsection (c) has been reached. The restrictions and conditions specified in paragraphs (2), (3), (4), (5), (6), and (7) of subsection (c) shall be included in the instruments of conveyance of lands to the State of California.

(2) Effective upon the conveyance to the State of California of lands described in subsection (a) of this section, or two years after the date of enactment of this Act,

whichever is sooner, the National Forest designation of such lands shall terminate. Any such lands not conveyed to the State of California shall thereupon be incorporated into the Stanislaus National Forest and managed to preserve and protect the stands of ponderosa pine, sugar pine and giant sequoia trees located on such lands.

(3) Any lands conveyed to the United States pursuant to this Act shall be deemed national forest lands and managed according to the laws governing the management of the National Forest System. If any such lands are outside existing boundaries of one or more National Forests, the Secretary shall modify such boundaries as he deems appropriate to include such lands.

(4) Values of the respective lands exchanged between the United States and the State of California pursuant to this Act shall be of 'approximately equal value' as that term is defined by regulations implementing the Act of January 12, 1983 known as the Small Tracts Act (16 U.S.C. 521c-521i).

2. Amend the title so as to read:

An Act to provide for the conveyance of certain lands to the State of California, and for other purposes.

PURPOSE OF THE MEASURE

The purpose of H.R. 2809, as ordered reported, is to convey the lands within the Calaveras Big Trees National Forest to the State of California for inclusion within the Calaveras Big Trees State Park. In consideration for such lands, the State of California will provide the United States lands, monetary grants, cash, or any combination thereof, in an amount approximately equal to the value of the Federal lands conveyed.

BACKGROUND AND NEED

Located near Beaver Creek, a tributary of the North Fork of the Stanislaus River, the Calaveras Big Trees National Forest was established to protect a magnificent stand of large, old-growth sugar pine. Many of these trees are over 8 feet in diameter and 200 feet tall. At 379 acres, the Calaveras Big Trees National Forest is the smallest national forest in the National Forest System, and the only national forest completely within the boundaries of another national forest. It is administered by the Calaveras Ranger District of the Stanislaus National Forest.

Unlike other national forests, the Calaveras is not managed for multiple-use, but is classified as a scenic area. The forest contains no hiking trails or camping facilities. Visitors usually camp at the adjacent Calaveras Big Trees State Park. The 6,000-acre Calaveras Big Trees State Park was established to protect not only the old sugar pines, but also ponderosa pine and giant sequoia trees. The park contains a number of recreational facilities and attracts over 200,000 visitors annually. Because of the consistency in purpose between the Calaveras National Forest and the State park, and because of the small size of the national forest, the forest could be more appropriately and efficiently managed as part of the Calaveras Big Trees State Park.

Accordingly, H.R. 2809, as ordered reported, would authorize and direct the Secretary of Agriculture to transfer, under certain conditions, the Calaveras Big Trees National Forest to the State of California for inclusion within the Calaveras Big Trees State Park in Tuolumne County, California.

LEGISLATIVE HISTORY

H.R. 2809 passed the House of Representatives on November 13, 1989 by a voice vote. The Subcommittee on Public Lands, National Parks and Forests held a hearing on H.R. 2809 on May 10, 1990.

At the business meeting on July 18, 1990, the Senate Committee on Energy and Natural Resources ordered H.R. 2809, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 18, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 2809 if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford*	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin	
Mr. Rockefeller	
Mr. McClure	
Mr. Hatfield*	
Mr. Domenici	
Mr. Wallop*	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn*	
Mr. McConnell	

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of H.R. 2809, the Committee adopted an amendment in the nature of a substitute. The substitute makes several technical and conforming amendments in addition to one substantive change. As passed by the House, H.R. 2809 directed that the Secretary exchange the lands within the Calaveras Big Trees National Forest for lands owned by the State of California. In addition to lands, the substitute gives the State the ability to compensate the United States for the conveyance with cash payments or monetary grants (or any combination of lands, grants or cash payments).

In 1982, the State of California passed the Lake Tahoe Acquisitions Bond Act, which provided funds for the State to either buy environmentally sensitive lands, or make grants to other agencies (Federal, State or local), or non-profit organizations, to purchase such land. The State of California would like the option of using

such grants to compensate the United States for the conveyance of the Calaveras lands.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the Congressional findings and the purpose of the Act.

Section 2(a) directs the Secretary of Agriculture to convey, subject to valid, existing rights and the provisions of this Act, the lands and interests within the Calaveras Big Trees National Forest to the State of California, to be included within the Calaveras Big Trees State Park.

Section 2(b) directs the Secretary to submit a map and legal descriptions of the lands conveyed to the State to the appropriate Congressional Committees, and to make such map and descriptions available for public inspection.

Section 2(c) sets forth the conditions of the conveyance provided for in subsection (a).

Section 2(c)(1) directs that the conveyance take place only if the State of California and the Secretary conclude an agreement, within 2 years after the date of enactment of the Act, which sets forth the terms and conditions for the conveyance. Such agreement must provide that the State of California will compensate the United States for the conveyance, in the form of lands in California, cash payments, or monetary grants awarded after June 1, 1990, or any combination thereof. Such consideration shall be of approximately equal value to the Federal lands conveyed to the State.

Section 2(c)(2) directs that no future timber harvesting, mining, mineral leasing, or geothermal exploration or development shall be permitted on the lands conveyed to the State of California. An exception is made for timber harvesting when necessary for the control of fire, insects, or disease.

Section 2(c) (3) and (4) provide that the conveyance of any lands received by the State of California, or the use of such lands inconsistent with the purposes of this Act, shall result in the reversion of all rights in such lands to the United States. Any such lands which revert to the ownership of the United States will be incorporated into the Stanislaus National Forest and be managed to preserve and protect the stands of ponderosa pine, sugar pine and giant sequoia trees located on such lands.

Section 2(c) (5) and (6) allow the Secretary access to the lands conveyed to the State for the purposes of collecting seed and monitoring management of the lands.

Section 2(c)(7) reserves to the United States existing ditches, canals, and rights-of-way within the lands conveyed to the State.

Section 2(d) directs the Attorney General to enforce the provisions of subsection (c) upon the request of the Secretary.

Section 2(e) provides for the timing of the conveyance and the status of the lands thereafter.

Section 2(e)(1) directs that the conveyance of lands to the State of California will occur when the agreement between the State of California and the Secretary, made pursuant to subsection (a), is finalized.

Section 2(e)(2) directs that the National Forest designation of the Calaveras Big Trees National Forest will terminate either upon conveyance of the Calaveras lands to the State, or 2 years after enactment, whichever is earlier. If the Calaveras National Forest lands are not conveyed to the State, then they will be incorporated into the Stanislaus National Forest and be managed to preserve and protect the stands of ponderosa pine, sugar pine, and giant sequoia trees located on such lands.

Section 2(e)(3) provides that any lands conveyed to the United States pursuant to this Act will become national forest lands and be managed accordingly. The Secretary shall modify the boundaries of the appropriate national forest or forests as necessary to accommodate the inclusion of such lands.

Section 2(e)(4) provides that if lands are exchanged between the United States and the State of California pursuant to this Act, that they be of "approximately equal value", as that term is defined by regulations implementing the Small Tracts Act. Those regulations define "approximately equal value" as "a comparative estimate of value of lands involved in an interchange where elements of value, such as physical characteristics and other amenities, are readily apparent and substantially similar."

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2809, an act to provide for the conveyance of certain lands to the State of California, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on July 18, 1990. CBO estimates that enactment of this legislation would have no significant impact on the federal budget or on those of state or local governments.

H.R. 2809 would authorize the conveyance of approximately 380 acres of land in the Calaveras Big Trees National Forest to the State of California in exchange for similarly valued state lands and only after the state agrees to abide by certain restrictions on the transferred lands.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2809. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2809, as reported.

EXECUTIVE COMMUNICATIONS

On April 30, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth executive views on H.R. 2809. These reports had not been received at the time the report on H.R. 2809 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service at the Subcommittee hearing follows:

STATEMENT OF JAMES C. OVERBAY, DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to offer our views on S. 2343, the "Clarks Fork Wild and Scenic River Designation Act of 1990" and H.R. 2809, regarding the transfer of the Calaveras Bigtree National Forest to the State of California.

S. 2343, REGARDING THE CLARKS FORK RIVER

The Clarks Fork of the Yellowstone River has been under consideration for Wild and Scenic River designation for over 10 years. A congressionally authorized study was completed in 1979. In 1982, President Reagan recommended to Congress that a segment of the Clarks Fork be included in the National Wild and Scenic Rivers System. A bill was introduced but not enacted. No further action was taken by the Congress until S. 2343 was introduced. The Shoshone National Forest Land and Resource Management Plan also recommends the Clarks Fork for designation.

The Clarks Fork has many unique and remarkable values. The scenery is outstanding, including cascades, waterfalls, and magnificent canyon walls. It offers a unique recreational experience because of its relatively undisturbed state and its opportunities for solitude. It has historic significance as part of the route followed by Chief Joseph and the Nez Perce Indians when they attempted to escape to Canada in 1877. The river is named after William Clark of the Lewis and Clark Expedition.

Our recommendation to Congress in 1982 was to designate 21.5 miles. S. 2343 would delete one-half mile from the lower end of the segment of .2 of a mile from the upper end. The segment that would be designated is 20.8 miles.

A reservoir is being considered at the mouth of the canyon and, if constructed, it would back water up into the lower canyon. Deleting the lower one-half mile would allow for the reservoir construction while not affecting the designation upstream. We believe this is a reasonable compromise. If the reservoir is not constructed, the one-half mile segment could be reconsidered for designation at some future time.

We believe that the existing land acquisition authorities of the Wild and Scenic Rivers Act would adequately protect uses of private property within the Clarks Fork river corridor. Furthermore, under existing law, condemnation authority would be available only for acquiring access or scenic easements. S. 2343 would eliminate this authority. While we have not used condemnation to enforce the provisions of the Wild and Scenic Rivers Act in over 10 years, we believe such authority should be retained to be used when negotiations fail and river values are seriously jeopardized—and always as a last resort. Without such authority, the Secretary cannot assure the protection of the river values. For this reason, we recommend that the Committee not make an exception to the existing land acquisition authorities already in the Wild and Scenic Rivers Act.

We are unclear regarding the intent and the effect of paragraph (B), and recommend that it be deleted from the bill. From our reading, it appears that a specific Federal reserved water right would be established under paragraph (B) to protect the values of the river. The quantity of water reserved would be determined through an agreement between the Secretary and the Governor of Wyoming. The Secretary and the Governor would have 3 years within which to reach agreement. In the interim, the quantity of the reserved water would be 50 percent of the monthly natural flow.

Reaching an agreement on this issue may be difficult and time consuming. Three years is a realistic timeframe for data collection and analysis. Conceivably, however, additional time could be required to negotiate an agreement. More importantly, it is unclear as to what happens if an agreement cannot be reached within the 3 year period, or at all. Would the "50-percent" provision be followed until an agreement was reached? What incentive would there be for the Governor to agree to that amount of water which the Secretary believes is the amount necessary to protect the river values, especially if the studies determine that an amount significantly larger than 5 percent is necessary? Mr. Chairman, we believe the current language inadvertently provides fertile grounds for prolonged disagree-

ment regarding the quantity of water that should be reserved.

The Wild and Scenic Rivers Act requires the Secretary to develop a river management plan for each designated river. In doing so, we would consult with the State, other agencies, and interest groups. The plan would explore alternative management scenarios, and analyze the effects of each reasonable alternative. In the case of the Clarks Fork, it is conceivable that different alternatives would necessitate different amounts of reserved water. Section 13 of the Wild and Scenic Rivers Act currently provides authority for the assertion of Federal reserved water rights to protect designated rivers. Upon finalizing the management plan, the Secretary would file with the State for a reserved right to the volume of water and flow regime required to maintain the resource values of the river corridor.

The Wyoming Game and Fish Department presently has a reserved right for a minimum flow of 200 cubic feet per second for the lower 5 miles of the river below Sunlight Falls. We believe this flow level is adequate to maintain the fishery and aquatic values. Higher flows, however, are necessary to maintain the scenic values of the river—particularly the waterfalls—and to facilitate the natural flushing action of the river during spring runoff. Furthermore, any protection provided by this State law reserved right may be temporary, since it is to be reviewed by December 31, 1998, by the State to determine if it should be continued.

Further data collection and analysis will be necessary to determine what flow regime may be necessary to maintain the present high quality of water and to provide the flows needed to transport sediment and natural debris through this reach of river. This flow regime could prove to be that needed to fulfill the purposes of the Act. Our preliminary studies indicate that the 50 percent of monthly flow that would be prescribed by paragraph (B) would be inadequate as a long-term minimum flow requirement. Furthermore, the necessary flow regime may be far more complex than a simple, arbitrary percentage of average flow.

For all these reasons, we prefer to pursue whatever water rights that may prove necessary under existing State water allocation law. Accordingly, we recommend that paragraph (B) be deleted from S. 2343.

If the Committee determines that paragraph (B) contains the provisions necessary to resolve the complex questions associated with this issue, we strongly recommend that it be amended to eliminate the uncertainty regarding what might happen in the case of delay or failure in reaching an agreement.

We recommend that paragraph (C) be deleted. Projects located entirely downstream from a designated river would not be affected by the provisions of the Wild and Scenic Rivers Act.

We are concerned that paragraph (D) as presently written would require the use of inappropriate control measures for fire, insects, and diseases. We recommend that "reasonable measures" be substituted for "all such measures" in line 23 on page 4 and that "fully" be deleted in line 24.

Mr. Chairman, the Clarks Fork of the Yellowstone is an excellent candidate for Wyoming's first designated National Wild and Scenic River. We look forward to working with the Committee and the Wyoming delegation to resolve our concerns about some aspects of S. 2343.

H.R. 2809, REGARDING THE CALAVERAS BIGTREE NATIONAL FOREST

The Calaveras Bigtree National Forest was established in 1909 to acquire and "permanently hold" specified lands in order to "prolong the existence, growth, and promote the reproduction" of giant sequoia. Two designated areas totalling 3,500 acres were authorized for acquisition. The Forest Service acquired 379 acres in 1953 through a land-for-timber exchange. The State of California has, for similar purposes, acquired several thousand acres in the area, including most of the lands authorized for the National Forest. The resulting land ownership pattern consists of a 379-acre National Forest surrounded by a much larger State park.

H.R. 2809, as passed by the House, would authorize and direct the Secretary of Agriculture to transfer lands within the Calaveras Bigtree National Forest to the State of California in exchange for lands in California and other consideration of approximately equal value. The transfer would not take place unless the Secretary and the State reached agreement on terms and conditions within 2 years of enactment.

The transfer would bring the area under the jurisdiction of a single unit of government. Our draft Land and Resource Management Plan recommends an exchange to the State. Also, a reduction of 7 miles of property boundary and 50 property corners would save about $40,000 over the next 5 years.

Mr. Chairman, we support enactment of H.R. 2809 as passed by the House, and we are actively working with the State of California to identify suitable State lands and other consideration that could be exchanged for Calaveras. We expect to quickly reach agreement if H.R. 2809 is enacted.

This concludes my testimony. I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 2809, as reported.

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